

TOWN OF AMHERST
LITIGATION STATUS/BILLING REPORT
(January 1, 2009 through December 31, 2009)

JANUARY 27, 2010

I. LITIGATION MATTERS

1. Seymour Epstein and Alice Epstein v. Planning Board for the Town of Amherst and Paul Cole
Hampshire Superior Court, C.A. No. 2007-00139
(#0009) [\$46.50]

Complaint filed in July, 2007 by abutters to the property at 1194 West Street, appealing the Planning Board's subdivision approval, per G.L. c.41, §81BB, and site plan approval, per G.L. c.40A, §17, for a proposed 11-unit cluster subdivision, Apple Brook.

2. Seymour Epstein and Alice Epstein v. Amherst Conservation Commission and Town of Amherst
Hampshire Superior Court, C.A. No. 2007-00177
(#0008) [\$62]

Complaint filed in August, 2007, per G.L. c. 249, §4 (certiorari), by abutters to property located at 1194 West Street, appealing the Conservation Commission's issuance of an Order of Conditions for a proposed 11-unit cluster subdivision, Apple Brook.

3. Paul Cole v. Amherst Conservation Commission and Town of Amherst
Hampshire Superior Court, C.A. No. 2008-00130
(#0040) [\$558]

Complaint filed in June 2008, per G.L. c. 249, §4 (certiorari), by the owner of property located at 1194 West Street, the site of the proposed Apple Brook Cluster Subdivision, seeking review of the Conservation Commission's Determination of Applicability for the property.

4. John Boothroyd, Thaddeus Dabrowski, Konnie Fox, Gina Fusco, Douglas Lowing, Steven Toutant, Sean Werle, Maura Whalen v. Amherst Conservation Commission and Town of Amherst
(Formerly Hampshire Superior Court, C.A. No. 2007-00273)
Appeals Court, C.A. No. 09-P-0414
(#0023) [\$6,370.50]

Complaint filed in December, 2007, per G.L. c. 249, §4 (certiorari), by abutters challenging the Conservation Commission's October, 2007 Determination of Applicability for 12 Longmeadow Drive, HAP, Inc.'s proposed Chapter 40B development.

5. John Boothroyd, Thaddeus Dabrowski, Konnie Fox, Douglas Lowing, Sean Werle and Maura Whalen v. Zoning Board of Appeals for the Town of Amherst and Butternut Properties Limited Partnership
Western Housing Court, Case No. 09CV1750
(#0063) [\$1,085]

Complaint filed in October 2009, appealing the Zoning Board of Appeals' decision denying the administrative appeal filed by plaintiff abutters challenging the issuance of building permits granted to co-defendant Butternut Properties Limited Partnership for the construction of a 26-unit apartment complex at 12 Longmeadow Drive.

6. Richard Cohen, Edward Change, Levern Thelen and Catharine Porter v. Planning Board of Amherst and New Genesis Foundation, Inc.
Land Court, Misc. Case No. 220380
(#0033) [\$62]

Complaint filed in August, 1995 appealing the Planning Board's grant of site plan approval to co-defendant New Genesis Foundation, Inc. for a proposed church in the Meadowbrook subdivision.

7. Town of Amherst v. Chabad House
Western Housing Court, Case No. 08CV2005
(#0054) [\$6,339.50]

Complaint filed by the Town on November 26, 2008, seeking to enforce its November 28, 2008 Order of Condemnation with respect to portions of the facility known as the Chabad House located at 30 North Hadley Road.

II. OUTSIDE INSURANCE COUNSEL MATTERS

1. Jonathan Klaucke v. Brian C. Daley
U.S. District Court, Case No. 3:07-cv-30155
(#0011) [\$5.60]

Complaint filed in August, 2007 by UMass student against police officer alleging violation of civil rights arising out of an incident in May 2007 when plaintiff was asked by Officer Daly to produce identification showing he is 21 years old. The Town is being defended by insurance counsel in this matter.

2. David Uriel Abrami v. Town of Amherst, Charles L. Scherpa, Marcus A. Humber, and Ryan N. Tellier
U.S. District Court, Case No. 3:09-cv-30176-MAP
(#0066) [\$139.50]

Complaint filed in October 2009 arising out of plaintiff's arrest in October 2006 for a violation of the Town's noise bylaw and a subsequent warning in July 2009. The Complaint alleges 14 counts, including false arrest, excessive force, civil

rights violation and that the Town's noise bylaw is unconstitutional. The Town's insurer has assigned separate counsel to represent the Town.

III. LABOR MATTERS

1. IAFF, Local 1764 v. Town of Amherst (Fire Health ULP)
Division of Labor Relations, Docket No. MUP-06-4696
(#0018) [\$1,426]

This cause of action was filed by the fire union at the Division of Labor Relations alleging that the calculation of health insurance benefits was instituted by the Town unilaterally and without bargaining with the Union.

2. William J. Koski v. Amherst Police League, Town of Amherst and [former] Town Manager
Hampshire Superior Court, C.A. No. 05-104
(#0029) [\$4,585.43]

This action filed by a former police officer against the Union and the Town resulting from his termination alleges, both in Superior Court and at the Division of Labor Relations, that the Union has violated its duty of fair representation.

3. Amherst Fire Fighters Union v. Town of Amherst (Fire/Health ULP)
Division of Labor Relations, Docket No. MUP-09-5456
(#0058) [\$542.50]

This case arises out of an allegation by the Amherst Firefighters Union that the Town violated the provisions of G.L. c.150E, §10(a)(5) and derivatively (1) by unilaterally instituting changes in the plan design for health insurance for certain Amherst firefighters.

4. Amherst Police League v. Town of Amherst (Seymour Arbitration)
AAA, Docket No. 11 390 02065 09
Division of Labor Relations, Docket No. MUP-09-5750
(#0061) [\$759.50]

This case arises out of the termination of Police Officer Brandon Seymour. In January 2010, the Amherst Police League filed a Charge of Prohibited Practice with the Division of Labor Relations arising out of the Union's allegation that the Town has violated the provisions of G.L. c.150E, §10(a)(1) and (5) by its failure to provide information needed for the prosecution of the grievance filed by the Union on behalf of terminated police officer Seymour.

5. Bokina v. Town of Amherst, et al.
MCAD Docket No. 09SEM03042
EEOC Docket No. 16C-2010-00339
(60700-0884) [\$0]

This case arises out a claim of disability discrimination filed with the Massachusetts Commission Against Discrimination (MCAD) by a former Town employee.

IV. MATTERS CLOSED IN 2009

1. Wayne J. Griffin Electric, Inc. v. Amherst Fire Department and Hadley Fire Department
Western Housing Court, Case No. 07CV1176
(#0004) [\$0]

Complaint filed in July, 2007, pursuant to G.L. c.148A, appealing the citation issued by the Fire Department (and upheld by the Municipal Hearing Officer) for failure to obtain necessary permit for work on a fire protection system at the UMass Central Heating Plant. The Fire Department decided to handle the matter without counsel. According to the court's docket, a Stipulation of Dismissal was filed with the court on September 27, 2007.

2. The Trustees of Hampshire College v. Town of Amherst and Zoning Board of Appeals
Hampshire Superior Court, C.A. No. 2008-00005
(#0024) [\$0]

Complaint filed in January, 2008 appealing the Zoning Board of Appeals' grant of a special permit to Edward and Peter Kosakowski for a flag lot for a parcel of land on West Bay Road. The plaintiff voluntarily dismissed the above matter in April, 2008, ending the litigation.

3. Town of Amherst, by and through its Board of Health v. Harmony Realty Trust, Eric H. Bert and David T. Keenan
Western Housing Court, No. 08CV1301
(#0028) [\$1,614.34]

This is an action seeking to enforce an Order to Correct Sanitary Code Violation and an Order of Condemnation the Board issued to David Keenan and Eric Bert for 28 Shays Street. The defendants restored the property and dwelling to a habitable condition, and the matter was dismissed by the court on December 7, 2009.

4. Clarendon National Insurance Company v. Amherst Fitness, Inc. d/b/a Coppermine Tanning Salon, Webster House Condominium, Allied Fire Protection, Inc., Joanne Delong, Heartland Tanning, Inc., M.J. Moran, Inc. and Peter Earle
Hampshire Superior Court, C.A. No. 2005-00263
(#0030) [\$139.50]

This is litigation involving multiple private parties concerning a fire at 30 Boltwood Walk in July, 2005. A final judgment of dismissal was issued by the court on November 25, 2009.

5. Chris Allison, Jean Allison, Heather Colson, Lance Davis, Carol Gray, Nick Thaw and Avril Wellman v. Conservation Commission and Town of Amherst
Hampshire Superior Court, C.A. No. 2006-00012
(#0048) [\$3,566.54]

Complaint filed in January, 2006, per G.L. c. 249, §4 (certiorari) and G.L.c. 231A (declaratory judgment), challenging the Commission's November, 2005 Order of Resource Area Delineation for property owned by Levi-Nielsen Company at South East Street. The Town's Motion to Dismiss the Complaint was allowed by the court on March 20, 2009, ending the litigation.

6. Eugene J. Borowski, individually, and Eugene J. Borowski, Manager of A&L Lashway, LLC v. Charles Mann, Ray Mann, W.D. Cows, Inc., Constructive Enterprises, Inc., Amherst Zoning Board of Appeals and Town of Amherst
Hampshire Superior Court, C.A. No. 2008-0209
(#0051) [\$496]

Complaint filed in October, 2008 appealing the Zoning Board of Appeals' grant of a special permit to create three flag lots for property at Owen Drive. This case was settled on January 15, 2009 by agreement of the private parties.

7. Joanne Jones, Lance Davis, Nicholas Thaw and Heather Colson v. Board of Appeals of the Town of Amherst and the Levi-Nielsen Company, Inc.
Hampshire Superior Court C.A. No. 2008-0234
(#0052) [\$2,108]

Complaint filed in November 2008 appealing the grant of a special permit for a proposed 17-unit planned unit residential development at 650 South East Street. This case was settled on September 14, 2009 by agreement of the parties.

8. Heather Colson, Lance Davis, Carol Gray and Nick Thaw v. Amherst Conservation Commission and the Town of Amherst
Hampshire Superior Court C.A. No. 2008-00230
(#0053) [\$8,016.91]

Complaint filed on November 7, 2008, per G.L. c.249, §4 (certiorari), appealing the Conservation Commission's Amended Order of Conditions, issued under the Town's Wetlands Protection By-law, for the Levi-Nielsen residential project on South East Street. The plaintiffs agreed to dismiss the case, and the parties filed a Stipulation of Dismissal with the court on September 24, 2009.

9. Karen Eddings v. Amherst Animal Welfare Officer
Eastern Hampshire District Court, Case No. 09-1
(#0065) [\$1,364]

Complaint filed in District Court in September 2009 by the plaintiff dog owner appealing the Town's order to euthanize a dangerous dog. This case was resolved in October 2009 by an Order of the court which, among other things, banished the dog from Massachusetts.

10. Cylvanna Elgadi, a minor, by Josielou C. Amascual, her parent and next friend v. Ciaran Dillon-Davidson, ppa Virginia Dillon v. Town of Amherst and School Committee of the Town of Amherst
Hampshire Superior Court, C.A. No. 2006-00269
(#0014) [\$0]

Plaintiff's First Amended Complaint, dated November 17, 2007, alleges that on October 15, 2004 Defendant Dillon-Davidson negligently hit Plaintiff in the face with a bowling ball during physical education class at Crocker Farm Elementary School, causing injury to Plaintiff's teeth. The Town and School Committee's involvement in this case stems from a Third Party Complaint filed by Defendant Dillon-Davidson in March, 2007, alleging that Plaintiff's injuries, if any, were the result of the negligence of the School Department and staff. The Town was defended by insurance counsel in this matter. According to the court's docket, this case was settled in January 2010 by agreement of the parties.

11. Miriam Dayton v. Town of Amherst
Hampshire Superior Court, C.A. No. 2001-00192
(#0032) [\$0]

Complaint filed in August, 2001 claiming that the operation of the Town landfill (now closed) on Belchertown Road constituted a nuisance, interfered with Plaintiff's enjoyment of her property and reduced the value of her property. The Town was defended by insurance counsel, and the case was settled in July, 2008.

12. Lilyan Waxman, as she is General Partner of Amshrew Associates, a Limited Partnership v. Amherst Housing Review Board and Town of Amherst
Northampton District Court, C.A. No. 2868 (88)
(#0049) [\$2,117.95]

Complaint filed in May, 1988 by plaintiff owner and operator of rental apartments known as Brandywine Apartments on Brandywine Drive appealing a decision of the former Housing Review Board reducing the rents charged by plaintiff. At the Town Manager's request, we petitioned the Court to re-direct the funds to be used to supplement the Town's fuel assistance program. The petition was granted and the remaining escrow funds were subsequently paid over to the Town.

13. IAFF, Local 1764 v. Town of Amherst (Fire Health Arbitration)
AAA, Docket No. 1139-01570-06 (Medical Insurance)
(#0017) [\$434]

This demand for arbitration was filed at the American Arbitration Association by the IAFF alleging that the Town violated the terms of the Collective Bargaining Agreement in the manner in which insurance contributions were assessed between the Town and bargaining unit members. The Union withdrew the case with prejudice on January 22, 2009.

14. SEIU, Local 888 v. Town of Amherst (Choiniere Termination)
AAA, Docket No. 1139-00304-08
(#0027) [\$7,542.50]

This Petition for Arbitration filed by the SEIU alleges that the Town violated the Collective Bargaining Agreement when it terminated Paul Choiniere. This matter and a related civil action were settled by agreement of the parties in August 2009, and a Stipulation of Dimissal was filed in October 2009 in the civil case.

15. S.E.I.U., Local 888 v. Town of Amherst (Goodhind Written Warning)
AAA, Docket No. 1139-00954-09
(#0060) [\$744]

This case arises out of an allegation by Town employee Susan Goodhind that the Town's issuance of a written warning regarding her use of sick time was not for just cause. This matter was settled by agreement of the parties in December 2009.

16. Amherst Fire Fighter Union, Local 1764 v. Town of Amherst
(Fire Captain Arbitration)
AAA, Docket No. 1139-00753-08
(#0039) [\$2,798.80]

This Petition for Arbitration filed by the fire union alleges that the Town violated various provisions of the Collective Bargaining Agreement in the manner in which fire captains were assigned to an administrative schedule. A decision was issued holding that the Town violated the Agreement. The Town decided not to appeal.